

Statement To The Acquisition Advisory Panel  
June 14, 2005

The Need For Regulatory And Statutory Reform  
To Provide For More Equitable Payment Of Interest  
In Disputes, Claims And Similar Situations

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## **Illustration Of The Disparity Between Real Financing Cost And Current Interest Recovery Under The Contract Disputes Act**

### ***Real Financing Costs—9% (Prime Rate Plus 3%) (From Illustration I)***

Interest During Contract Performance Period, Years 1-2	\$ 23,800
Interest During Claim Preparation And Certification Period, Year 3	\$ 24,800
Interest During Claim Dispute Resolution Period, Years 4-6	<u>\$ 89,000</u>
	<u>\$137,600</u>

### ***Contract Disputes Act Interest—4.25% (Treasury Rate) (From Illustration II)***

Interest During Claim Dispute Resolution Period, Years 4-6	<u>\$ 33,700</u>
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## Timeline Illustration

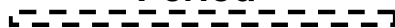
Current Interest “Rules” Fail To Provide  
Reasonable Interest Cost Recovery To Contractors

**Original Contract Performance**



**Change Emerges**

**Extended Performance  
Period**



**Changed Work Performance**

**Claim Preparation, Etc.**



**Certified Claim Submitted  
Negotiation**



**Settlement (?)**

**Appeal**



**Award (?)**

**Increased Contractor Investment  
& Related Financing Cost Start**

**Contract Disputes Act  
Interest Starts (If Applicable)**

## **Summary Of Recommendations For Interest Improvement**

- (i) 28 U.S.C. § 1961 (c) (2) should be amended to state that “Except as otherwise provided in paragraph (1) of this subsection, interest shall be allowed on all final judgments against the United States in the United States Court of Appeals for the Federal Circuit, regardless of whether there has been an appeal to the Supreme Court by any party, at the rate provided in subsection (a) and as provided in subsection (b).**
  
- (ii) The interest recoverability provision (41 U.S.C. § 611) of the Contract Disputes Act should be extended to all U.S. Government Contracts where the Federal Government is liable to private parties for claims, increased costs, damages or restitution.**

## **Summary Of Recommendations For Interest Improvement (Continued)**

- (iii) The Contract Disputes Act should be amended to provide that interest starts from the day the claim increased costs are incurred or damages arise, determined either on a cash basis or a reasonable accrual basis.**
- (iv) Federal Acquisition Regulation (FAR) 31.205-20 should be amended to permit the inclusion of Contract Disputes Act-like interest in the pricing of all Requests for Equitable Adjustments and similar claims.**
- (v) Interest rates used to pay interest on Government liabilities should be revised to reflect more realistic commercial financing cost rates; quarterly compounding should be permitted.**